

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

01-2686

CHRIS HUGHES, on his behalf and all
others similarly situated,

CASE NO.

U.S.M.J. 11:51

Plaintiff(s),

v.

HOME DEPOT U.S.A., INC.,

Defendant.

MACFARLANE 11:51
COMPLAINT

COMES NOW Plaintiff, CHRIS HUGHES, on his behalf and on behalf of all
others similarly situated, and sues Defendant, HOME DEPOT, U.S.A. INC., and in
support thereof states:

1. This is an action for damages on behalf of Plaintiff and similarly situated
Plaintiffs, all of whom are employees as provided under the Fair Labor Standards
Act of 1938, as amended, (hereinafter FLSA), 29 U.S.C. § 201 et seq.
2. This Honorable Court has jurisdiction as provided under 28 U.S.C. § 1337 and 29
U.S.C. § 216(b).
3. Venue is proper before this Honorable Court because all acts pertinent hereto
occurred in Miami-Dade County, Florida, and Defendant maintains offices in and
conducts business in Miami-Dade County, Florida.
4. Plaintiff is over eighteen years of age, maintains residence in Dade County,
Florida, within the jurisdiction of this Honorable Court and is otherwise *sui juris*.

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5. Upon information and belief, other similarly situated Plaintiffs (hereinafter "Plaintiffs") are over eighteen years of age, maintain residence in Dade county or Miami-Dade County, Florida and are otherwise *sui juris*.
6. Defendant is a corporation organized in Florida and conducting business within the jurisdiction of this Honorable Court, or elsewhere in Florida.
7. Upon information and belief, at all times pertinent hereto, Defendant is an enterprise engaged in interstate commerce or in the production of goods for commerce and had annual gross sales volume in excess of \$500,000.00, or otherwise satisfies FLSA's revenue requirements.
8. At all times pertinent hereto, Plaintiff or Plaintiffs were Defendant's employees engaged in commerce, in the production of goods for commerce or handled, sold, or otherwise worked on goods or materials that moved in or were produced for commerce for Defendant's business.
9. At all times pertinent hereto the work Plaintiff or Plaintiffs performed for Defendant was directly essential to Defendant's business.
10. At all times pertinent hereto, as a result of work performed by Plaintiff or Plaintiffs, Defendant was engaged in interstate commerce.
11. At all times pertinent hereto, Plaintiff or Plaintiffs were paid an hourly wage.

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12. At all times pertinent hereto, Defendant paid Plaintiff and Plaintiffs for the hours they worked in excess of forty (40) hours per week at his regular hourly rate, but did not pay Plaintiff or Plaintiffs for hours they worked in excess of forty (40) at rates as required under FLSA.
13. Defendant knew or should have known of its responsibility to pay its employees in accordance with FLSA.
14. Upon information and belief, at all times pertinent hereto, Defendant did not disclose, provide or make FLSA notices available to, nor advise Plaintiff or Plaintiffs of their rights under FLSA.
15. Plaintiff or Plaintiffs are entitled to liquidated damages under FLSA due to Defendant's willful violation of FLSA's compensation, disclosure and requirements.
16. Plaintiff or Plaintiffs are entitled to reasonable attorneys' fees and costs as provided under 29 U.S.C. § 216(b).
17. Plaintiff or Plaintiffs retained Neil Flaxman, P.A. to represent them in the instant matter and agreed to pay said firm a reasonable fee for its services.
18. Plaintiff satisfied, or Defendant waived, all conditions precedent to this action.

**COUNT I, PLAINTIFF'S CLAIM FOR
RECOVERY OF OVERTIME COMPENSATION**

19. Plaintiff realleges the allegations in Paragraphs 1 through and including 18 above, as though stated herein.

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20. Plaintiff was first employed by Defendant beginning March 13, 1995 as a loss prevention supervisor.
21. On or about February 1, 2001 Plaintiff's employment ended with Defendant.
22. Although the title of loss prevention supervisor is given to loss prevention employees such individuals are in fact non-exempt under the FLSA.
23. At all times pertinent hereto, Plaintiff was paid a salary with pay records that indicate he was working 40 hours per week, which was not in fact correct.
24. Computing Plaintiff's hourly rate based upon said salary, Plaintiff's hourly approximate compensation was \$18.00 per hour with an overtime rate of \$27.00 per hour.
25. Defendant did not pay Plaintiff the remuneration to which Plaintiff was entitled under FLSA.
26. The records, if any, that define the number of hours Plaintiff worked and the amount Defendant paid him are in Defendant's sole possession, custody and control. Plaintiff cannot, therefore, specifically state his damage claim; Plaintiff will, however, attempt to obtain information necessary to state his claim for damages with specificity through discovery and will seek leave of court to amend this complaint accordingly.
27. At all times pertinent hereto Plaintiff was an hourly employee and did not have requisite supervisory responsibilities or discretionary authority to be an exempt employee under FLSA and was not a salaried employee.

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WHEREFORE, Plaintiff respectfully demands judgment against Defendant for damages as provided under FLSA, overtime wages, liquidated damages, as determined herein, interest, costs and reasonable attorneys' fees and such further relief as this Honorable Court deems just.

**COUNT II, SIMILARLY SITUATED PLAINTIFFS'
CLAIM FOR RECOVERY OF OVERTIME COMPENSATION**

28. Plaintiffs readopt and reallege all allegations contained in Paragraphs 1 through and including 18 above, as though stated herein.
29. At all times pertinent hereto, Defendant did not pay Plaintiffs the remuneration to which they are entitled under FLSA by failing to pay overtime.
30. The Plaintiff and all similarly situated Plaintiffs all share common issues of law and fact in that such employees are all hourly employees and not exempt under the FLSA. In addition if in fact there are employees who are salaried but who are not exempt under the act and who have worked overtime, such employees likewise should be included in any class certified hereunder.
31. Plaintiff and Plaintiff's counsel can adequately represent the interests of the similarly situated individuals.
32. The records, if any, that define the number of hours Plaintiffs worked and the amount Defendant paid them are in Defendant's sole possession, custody and control. Plaintiffs cannot, therefore, specifically state their damage claim. Plaintiffs will, however, attempt to obtain information necessary to state their claim for damages with specificity, through discovery, and will seek leave of court

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to amend this complaint accordingly.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant for damages as provided under FLSA, overtime wages, liquidated damages, as determined herein, interest, costs and reasonable attorneys' fees and such further relief as this Honorable Court deems just.

Dated: 6/26/01

Respectfully submitted,

Neil Flaxman, P.A.
Attorney for Plaintiff
550 Biltmore Way, Suite 780
Coral Gables, FL 33134
Tel: 305-445-1388, Fax: 305-443-0279

By: 

Neil Flaxman
Fla. Bar No. 025299

JS 44
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Chris Hughes, on his behalf and all others similarly situated.

DEFENDANTS

Home Depot USA, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dade
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Dade
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Neil Flaxman, P.A., 550 Biltmore Way, #780
Coral Gables, FL 33134 305-445-1388

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT		A TORTS		FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	A PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans Excl. Veterans	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	B SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of veteran's benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA 1595M	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		A LABOR	<input type="checkbox"/> 862 Black Lung 1923	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 190 Other Contract			<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC DIWW 405(g)	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act	
			<input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI 405(g)	<input type="checkbox"/> 893 Environmental Matters	
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	HABEAS CORPUS:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 890 Other Statutory Actions A OR B	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other				
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights				
		<input type="checkbox"/> 555 Prison Condition				

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. sec. 201

LENGTH OF TRIAL

via _____ days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ YES ☒ NO**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY